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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/086,949	02/28/2002	Carol L. Colrain	007.0192.01	3935

29989 7590 08/11/2005

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EXAMINER

LIM, KRISNA

ART UNIT PAPER NUMBER

2153

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/086,949

Applicant(s)

COLRAIN ET AL.

Examiner

Krisna Lim

Art Unit

2153

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 February 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-12 and 26-33 is/are allowed.
- 6) ☒ Claim(s) 13-25 and 34-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

1. Claims 1-46 are presented for examination.

2. Claims 13-25 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not understood how a cluster framework is structuring to have at least an application layer, a database instance resource group and a monitor.

In claim 25, it is unclear who or what performs code according to the method claim 13.

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 13-25 and 34-45 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter "method" that is mentally performed by hand with papers and pencils. Applicants are recommended to change this language to "A computer-implemented method".

5. Claim 25 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter including an intangible media such as a data signal or a carrier signal which is incapable of being touched or perceived absent the tangible medium through which they are conveyed. It is true that an article of manufacture and a machine-readable storage medium is a statutory category of the invention (2107.01 of the MPEP), however if the specification defines this machine-

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readable storage medium as a data signal or a carrier wave, this machine-readable storage medium is also intangible media which is a non-statutory subject matter. Thus, the claimed invention is directed to the instructions which are not a statutory subject matter because these instructions haven't clearly claimed that they are executable by the computer. See section 2106 of the MPEP.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. Claims 45-46 are rejected under 35 U.S.C. 102(e) as being un-patentable over Roselli et al. [U.S. Patent No. 6,718,486].

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8. Roselli et al. disclosed (e.g., see Figs. 1-16) the invention substantially as claimed. Taking claims 45-46 as exemplary claims, the reference disclosed a system for detecting a failure (e.g., see Figs. 1-16 and the abstract) comprising:
  - a) a first computer component (e.g., see 43-1 of Fig. 2) and a second computer component (e.g., see 43-1ha of Fig. 2) that are configured to communicate over a first connection (e.g., 67 of Fig. 2); and
  - b) a fault monitoring component (e.g., a resource management unit 46-1, the abstract) that is configured to monitor the status of a first process (service unit S1) associated with said first computer component and in response to detecting a failure of said first process, causing an out-of-band notification is sent over a second connect that is distinct from the first connection.
9. Claims 1-12 and 34-42 are allowed.
10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The references are cited in the Form PTO-892 for the applicant's review.

A shortened statutory period for response to this action is set to expire 3 (three) months and 0 (zero) days from the mail date of this letter. Failure to respond within the period for response will result in **ABANDONMENT** of the application (see 35 U.S.C 133, M.P.E.P 710.02, 710.02(b)).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krisna Lim whose telephone number is 571-272-3956. The examiner can normally be reached on Monday to Wednesday and Friday from 7:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess, can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KI

July 27, 2005



KRISNA LIM  
PRIMARY EXAMINER